

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7292
DATE COMPLAINT FILED: October 27, 2017
DATE OF NOTIFICATION: November 3, 2017
DATE OF LAST RESPONSE: November 17, 2017
DATE ACTIVATED: December 28, 2017

EXPIRATION OF SOL: February 8, 2019 (earliest)/
September 8, 2022 (latest)
ELECTION CYCLES: 2012, 2014, 2016, and 2018

COMPLAINANTS: Brendan M. Fischer, Campaign Legal Center
Catherine Hinckley Kelley, Campaign Legal Center

RESPONDENTS: Clifford "Cliff" B. Stearns
Friends of Cliff Stearns and Joan Stearns in her
official capacity as treasurer

RELEVANT STATUTES AND REGULATIONS: 52 U.S.C. § 30114(b)
11 C.F.R. § 113.1(g)
11 C.F.R. § 113.2

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint in this matter alleges violations of the personal use provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), in connection with disbursements made by former Congressman Clifford B. Stearns and his authorized campaign committee, Friends of Cliff Stearns and Joan Stearns in her official capacity as treasurer (the "Committee") (collectively, "Respondents"). The Complaint alleges that Stearns, who has not been a candidate since 2012, used over \$36,000 in Committee funds for post-candidacy personal expenses including, among other things, monthly cell phone bills, monthly salary payments to Stearns's wife, political contributions meant to further Stearns's lobbying career, membership

1 dues and expenses at a private club and retreat, storage fees, and miscellaneous credit card
2 charges, in violation of 52 U.S.C. § 30114(b).

3 Respondents deny the allegations, asserting that the disbursements in question are
4 permissible uses related to Committee expenses or to Stearns's duties as a former federal
5 officeholder. Notwithstanding this assertion, the response indicates that, out of "an abundance of
6 caution," Stearns has reimbursed the Committee for the cell phone bills and food and beverages at
7 the private club. Further, Respondents acknowledge that they failed to itemize a small number of
8 disbursements related to credit card charges, but argue that the failure to itemize those charges was
9 a *de minimis* error and that the Commission should dismiss this matter.

10 As discussed below, it appears that a substantial number of the challenged disbursements
11 were made for personal expenses, in violation of 52 U.S.C. § 30114(b). Accordingly, we
12 recommend that the Commission find reason to believe that Stearns and the Committee violated
13 the Act by expending campaign funds for personal use.

14 **II. FACTUAL BACKGROUND**

15 Clifford "Cliff" B. Stearns is a former U.S. Representative from Florida's 6th
16 Congressional District. Stearns held his seat from 1989 to 2013. Stearns's principal campaign
17 committee holds over \$1.64 million in cash on hand and carries no debt.¹ Joan Stearns, the wife
18 of the former candidate, is the Committee's treasurer.

19 The Complaint alleges that since leaving his Congressional office, Stearns has been
20 violating the Act by converting campaign funds to personal use.² Specifically, the Complaint

¹ Friends of Cliff Stearns, 2017 Year-end Report, FEC Form 3, *Report of Receipts and Disbursements* at 2 (Jan. 29, 2018), <http://docquery.fec.gov/cgi-bin/forms/C00229377/1201427/>. The Committee discloses no contributions received on recent reports. It appears that receipts are limited to profits from the investment of Committee funds, *e.g.*, recurring receipts from T. Rowe Price and the Vanguard Group. *Id.*

² Compl. at 1 (Oct. 27, 2017).

1 alleges that Stearns has used Committee funds to further his lobbying career and subsidize his
2 family by: (1) paying a monthly cell phone bill; (2) making payments to his wife for
3 "administrative services"; (3) paying for membership dues, meals, and beverages at a private DC
4 club; (4) making contributions to political candidates; (5) paying for attendance and meals at a
5 conservative retreat; (6) paying for the use of a storage facility; (7) paying for book appraisal
6 services; (8) paying for framing services; (9) paying credit card bills for "holiday cards" and
7 "books/gifts"; and (10) paying unitemized credit card bills.³ The Complaint alleges that the total
8 disbursements made for personal use since Stearns left office are as follows:⁴

Disbursement	Purpose	Amount
Verizon	Cell Service	\$5,180.00
Joan Stearns	Administrative Support	\$5,000.00
National Republican Club of Capitol Hill	Membership Dues/Food and Beverage	\$4,118.95
Various Political Candidates ⁵	Contributions	\$5,000.00
Awakening, Inc. ⁶	Annual Conservative Retreat	\$6,040.00
Neighborhood Storage	Storage Services	\$6,008.00
Roger's Frame Shop	Framing Services	\$1,093.51
Second Story Books	Appraisal	\$340.00
Card Services	Holiday Cards	\$380.14
Card Services	Books/gifts	\$1,469.42
Card Services	Not itemized	\$2,246.45
	Total	\$36,876.47

³ *Id.* at 3-8.

⁴ *Id.*

⁵ *Id.* at 4-5. Specifically, the Complaint alleges that Stearns used campaign funds for the following contributions made in order to further Stearns's lobbying career: (1) \$2,000 to Rep. Chris Smith; (2) \$1,000 to Rep. Greg Walden; (3) \$1,000 to Sen. Kelly Ayotte; and (4) \$1,000 to Rep. John Mica.

⁶ The amount at issue in this allegation, \$6,040, is the total of six payments to Awakening, Inc.: (1) \$1,320 on January 10, 2014; (2) \$650 on October 19, 2014; (3) \$1,320 on November 20, 2014; (4) \$1,850 on October 14, 2015; (5) \$350 on January 7, 2017; and (6) \$550 on May 1, 2017.

1 The Complaint contends that many of the disbursements at issue were for expenses that the
2 Committee never paid for while Stearns was a candidate or a U.S. Representative.⁷ For example,
3 the Complaint indicates that the Committee did not disclose payments for a cell phone while
4 Stearns was a candidate or a member of Congress.⁸ In addition, the Complaint notes that the
5 Committee began paying Joan Stearns \$1,000 a month for "administrative services" in June 2017,
6 over three years after Stearns left office, and argues that the payments exceed the fair market value
7 for a treasurer given the Committee's limited activity during this period.⁹

8 Finally, the Complaint alleges that the contributions made to various candidates, as well as
9 the membership dues to the National Republican Club of Capitol Hill, are tied to Stearns's
10 position as a paid lobbyist. In support of this allegation, the Complaint includes information from
11 a news article noting that Stearns has contributed funds from his campaign account to "lawmakers
12 with influence over issues he's being paid to lobby on, including foreign investment and
13 energy."¹⁰

14 Respondents deny that Stearns converted Committee funds for personal use.¹¹ They argue
15 that the Act and Commission regulations allow excess campaign funds to be used for a variety of

⁷ Compl. at 5.

⁸ *Id.*

⁹ *Id.* at 5-6. Joan Stearns was named Committee treasurer in an amended Statement of Organization filed with the Commission on April 6, 2013. See Friends of Cliff Stearns, FEC Form 1 *Statement of Organization* (Apr. 6, 2013), <http://docquery.fec.gov/cgi-bin/forms/C00229377/864148/>. The Complaint contrasts the payments to Joan Stearns for administrative services with the fact that the Committee did not pay Joan Stearns for serving as treasurer during the 2014 or 2016 election cycles.

¹⁰ Compl. at 3-4 (citing Bill Theobald and Donovan Slack, *Former Lawmakers Sit on Tens of Millions in Campaign Cash*, USA TODAY (July 31, 2015), <https://www.usatoday.com/story/news/politics/2015/07/31/former-lawmakers-still-have-campaign-cash/30943329/>).

¹¹ Resp. at 1 (Nov. 21, 2017). Stearns and the Committee were separately notified of this complaint. After only the Committee filed a response, Respondents' counsel later indicated that the response was on behalf of both Stearns and the Committee.

1 purposes, including "paying ordinary and necessary expenses incurred in connection with duties of
2 the individual as a holder of Federal office," contributing to tax exempt organizations, and "any
3 other lawful purpose" as long as the expenses would not exist irrespective of a campaign or duties
4 as a federal officeholder.¹² Respondents explain that Stearns maintains the Committee because he
5 has not ruled out another run and that the expenses listed in the Complaint were related to
6 Stearns's previously held federal office or are otherwise permissible uses of campaign funds.¹³

7 Respondents specifically assert that the cell phone payments are legitimate because they
8 cover the cost of a Verizon hotspot used by the Committee to file reports with the Commission.¹⁴
9 Despite this assertion, the Respondents declare that, in an "abundance of caution," Stearns has
10 reimbursed the Committee \$5,180 for the cost of the cell phone service and cell phone.¹⁵

11 Moreover, Respondents argue that Commission regulations allow campaign funds to be
12 used for membership dues to an organization that has political interests, and contend that Stearns
13 consulted with Commission staff and was told that it was permissible to pay membership fees for
14 the National Republican Club (the "Club") with Committee funds.¹⁶ Respondents explain that,
15 when made aware that meals at the Club may not be treated in the same manner as Club

¹² *Id.*

¹³ *Id.* at 1-3.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 2. On May 19, 2014, Stearns spoke with his Committee analyst in the Reports Analysis Division ("RAD") regarding permissible uses of residual campaign funds. The analyst explained the general guidelines of personal use, but referred Stearns to the Information Division. On June 16, 2017, Joan Stearns contacted RAD and asked questions about converting the Committee to a multicandidate committee. The Committee has not made changes to its organization.

1 membership fees, Stearns reimbursed the Committee \$2,019.95 for the cost of food and beverages
2 purchased at the Club.¹⁷

3 Respondents further contend that the Act allows candidate committees to make
4 contributions to federal, state, or local committees and candidates. Respondents point to the
5 Committee's contributions to other candidates and committees that were not listed in the
6 Complaint as evidence that the Committee's contributions to candidates were not made to further
7 Stearns's lobbying career.¹⁸ Respondents maintain that the motivation for the contributions is
8 irrelevant and does not fall under the Commission's jurisdiction.¹⁹

9 With regard to the payments to Joan Stearns, Respondents state that, as the treasurer of the
10 Committee, Joan Stearns prepares and files reports with the Commission, prepares tax filings, and
11 handles correspondence and requests for charitable contributions.²⁰ According to Respondents,
12 the Committee executed a contract in June 2017 with Joan Stearns that sets forth a \$1,000 monthly
13 payment in exchange for her professional services to the Committee, which the Committee
14 maintains is the fair market value for her services.²¹

15 As to the remaining disbursements, Respondents assert that the Committee's payments to
16 Awakening, Inc. for attendance at retreats are permissible charitable contributions to a section
17 501(c)(3) non-profit organization and explain that the Committee's disbursements for framing and

¹⁷ *Id.*

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* Respondents argue that there is no legal significance to the fact that Joan Stearns previously offered her services as a treasurer at no cost. *Id.* at 3-4.

1 book appraisal relate to Stearns's donation of materials to other educational and non-profit
2 institutions: the College of Central Florida and the Ocala Public Library.²² The Respondents
3 further argue that the Committee's disbursements for holiday cards were permissible *de minimis*
4 value "gifts" for supporters and that the disbursements for books and gifts were to purchase
5 Stearns's book, for which Respondents assert Stearns received no royalties, as *de minimis* value
6 gifts for supporters.²³ The Respondents also state that the cost of the storage unit is "an ordinary
7 and necessary expense incurred with Representative Stearns's duties as a holder of Federal
8 office."²⁴ Finally, Respondents explain that the unitemized expenses paid for with the Committee
9 credit card were an \$1,850 payment to Awakening, Inc., for another conference, \$166 for the
10 Committee post office box, and \$230.45 for lodging for Stearns when he attended a charitable
11 event.²⁵

12 III. LEGAL ANALYSIS

13 The Act affords federal candidates and their campaign committees wide discretion in the
14 disposition of their campaign funds and provides that contributions accepted by a candidate may
15 be used in several categories of permissible non-campaign uses of campaign funds, including the
16 "ordinary and necessary expenses incurred in connection with duties of the individual as a holder
17 of Federal office."²⁶ Such expenses include the "costs of winding down the office of a former

²² *Id.* at 4-5 (noting that the Committee sent holiday cards "in order to garner and sustain support" in light of Stearns's "open mind in regard to running for office" again).

²³ *Id.* at 4 (noting that the Committee ended up donating the books to Goodwill).

²⁴ *Id.* at 5 (noting that Stearns is not winding down his campaign).

²⁵ *Id.* The credit card payment for \$1,850 that was used to pay Awakening, Inc. was not itemized and was therefore not included in the \$6,040 the Complaint alleges were impermissible payments to Awakening, Inc.

²⁶ 52 U.S.C. § 30114(a)(2).

1 Federal officeholder for a period of 6 months after he or she leaves office.”²⁷ Commission
2 regulations specify that any use of funds that would be personal use “will not be considered . . . an
3 ordinary and necessary expense incurred in connection with the duties of a holder of Federal
4 office.”²⁸ Candidates and their committees may also use campaign funds to make donations to
5 tax-exempt organizations described in section 170(c) of the Internal Revenue Code and for “any
6 other lawful purpose” that does not convert the funds to personal use.²⁹

7 Conversion to personal use occurs when funds in a campaign account are used “to fulfill
8 any commitment, obligation, or expense of a person that would exist irrespective of the
9 candidate’s election campaign or individual’s duties as a holder of Federal office.”³⁰ The Act and
10 Commission regulations further set forth certain uses of campaign funds that constitute *per se*
11 conversion to personal use, including utility payments, non-campaign-related automobile
12 expenses, and dues and fees for health clubs, recreational facilities or other nonpolitical
13 organizations unless they are part of the costs of a specific fundraising event taking place on those
14 premises.³¹ In addition, salary payments to family members are personal use, unless the family
15 member is providing *bona fide* services to the campaign.³² Any salary payment to a candidate’s

²⁷ 11 C.F.R. § 113.2(a)(2).

²⁸ 11 C.F.R. § 113.1(g)(5).

²⁹ See 52 U.S.C. § 30114(a)(3), (6); 11 C.F.R. § 113.2(b), (e).

³⁰ See 52 U.S.C. § 30114(b)(2); see also 11 C.F.R. § 113.1(g).

³¹ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i); see also Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995) (“Personal Use E&J”) (explaining that club membership fee provision at 11 C.F.R. 113.1(g)(1)(i)(G) does not “limit legitimate campaign related or officeholder related activity” and “allows a candidate or officeholder to use campaign funds to pay membership dues in an organization that would have political interests. This would include community or civic organizations that a candidate or officeholder joins in his or her district in order to maintain political contacts with constituents or the business community.”).

³² 11 C.F.R. § 113.1(g)(1)(i)(H).

1 family member that exceeds the fair market value for the services provided to the campaign is a
2 conversion to personal use.³³ Similarly, an otherwise permissible charitable donation to a tax-
3 exempt organization would constitute personal use if the candidate receives compensation from
4 the recipient organization before it has expended the entire amount donated for purposes unrelated
5 to the candidate's personal benefit.³⁴

6 For all other disbursements, the Commission determines on a case-by-case basis whether a
7 given campaign fund disbursement is personal use by applying the "irrespective test," that is,
8 whether the payment fulfills a commitment, obligation, or expense that would exist irrespective of
9 the candidate's campaign or duties as a federal officeholder.³⁵ The Commission has stated,
10 however, that "[i]f the candidate can reasonably show that the expenses at issue resulted from
11 campaign or officeholder activities, the Commission will not consider the use to be personal
12 use."³⁶

13 The Complaint in this matter alleges that Stearns impermissibly spent over \$36,000 in
14 campaign funds for his personal expenses after he ceased being a candidate in 2012 and a federal

³³ *Id.*; see also Personal Use E&J, 60 Fed. Reg. at 7866.

³⁴ 11 C.F.R. § 113.2(b).

³⁵ 11 C.F.R. § 113.1(g)(1)(ii).

³⁶ See Personal Use E&J, 60 Fed. Reg. at 7863-64.

1 officeholder in 2013.³⁷ A review of the disbursements specified in the Complaint³⁸ shows that a
2 number of the disbursements (totaling almost \$10,000) appear to be permissible uses of campaign
3 funds. First, the Committee's contributions to other candidates are permissible subject to the
4 Act's limitations.³⁹ Second, it appears that the Committee made *per se* charitable contributions
5 when it: (1) framed and donated a photograph, among other items, to the College of Central
6 Florida; (2) paid for the appraisal of books donated to a public library; and (3) paid for a number
7 of copies of Stearns's book, which were then donated to Goodwill.⁴⁰ Finally, it is reasonable to
8 infer that the cost of a post office box would be necessary for even a dormant committee to receive
9 correspondence, and therefore it appears that the \$166 payment for the box was permissible.

10 There is reason to believe that the remaining disbursements may constitute impermissible
11 personal use of campaign funds in whole or in part. First, since Stearns left office, the Committee
12 paid Verizon bills totaling over \$5,000 for an account that included a cell phone, which it
13 describes as being used to generate an internet "hot spot" for filing disclosure reports. Although

³⁷ In 1989, Congress amended the Act to ensure that the personal use prohibition would apply to all current and former members of Congress. *See* Ethics Reform Act of 1989, Public Law 101-194, § 504, 103 Stat. 1716, 1755 (restricting previous grandfather provision that had exempted from personal use rules certain members elected to office prior to 1980). The legislative history of the Ethics Reform Act of 1989 indicates that Congress was particularly interested in prohibiting the conversion of campaign funds to personal use by former officeholders (or their estates) after they have retired, been defeated, or died. *See* 135 Cong. Rec. S15968-69 (daily ed. Nov. 17, 1989) (statement of Sen. Nickels). As explained in the legislative history, the Ethics Reform Act of 1989 therefore amended the personal use provision to clarify that it would be impermissible for a former Senator to use (or, in the case of a deceased officeholder, have the estate use) campaign funds for personal purposes as essentially "an illegal pension fund." *See* 135 Cong. Rec. S15969-70 (daily ed. Nov. 17, 1989) (statement of Sen. Shelby). Thus, the question presented here is whether the duties for which Stearns used campaign funds would exist irrespective of his duties as an officeholder, even more than four years after he left office. *See* Advisory Opinion 2001-03 (Meeks) (applying section 113.1(g)(5)'s personal use restriction to funds spent to defray officeholder expenses); Advisory Opinion 1996-9 (Exon for Senate) (analyzing permissible post-retirement transfer of funds as impermissible conversion to personal use).

³⁸ *See supra* at 3.

³⁹ 52 U.S.C. § 30102(e)(3)(B) and 11 C.F.R. § 102.12(c)(2). All of the Committee's contributions to candidates appear to be within the Act's limits.

⁴⁰ *See* 11 C.F.R. § 113.1(g)(2).

1 Respondents state that "no one in the Stearns family is being subsidized by the cell phone and hot
2 spot," it is unclear what this statement means or whether the described Committee uses were the
3 sole uses of the cell phone and "hot spot." Although Stearns's representation that he has
4 reimbursed the Committee for the cell phone bill does not constitute an admission, the failure to
5 provide a clear response makes it reasonable to credit the Complaint's allegation that some or all
6 of these payments, which started only after Stearns left office, were made for an expense that
7 would exist irrespective of Stearns's officeholding duties and, therefore, are personal use.

8 Second, the Committee only recently began paying a salary to Stearns's wife, Joan Stearns,
9 for her services as the Committee treasurer. While the Committee could pay its treasurer a salary
10 equivalent to the fair market value for the services rendered, the Complaint challenges the \$1,000
11 per month payments as being above the fair market value for the treasurer of a dormant committee
12 that makes only a small number of disbursements (all of which the Complaint characterizes as
13 "illegal") and files "short" reports with the Commission. Although Respondents argue that the
14 \$1,000 monthly salary is fair because "many consultants charge over \$5,000 per month for
15 accounting and compliance services," they provide no information regarding how they calculated
16 the fair market value of Ms. Stearns's services for a dormant committee. Further, the Committee
17 did not describe the time Joan Stearns spends on Committee business and whether those duties
18 justify the \$1,000 per month fee. Without that information, and given what appears to be the
19 relatively limited activity of the Committee, there is reason to believe that the salary payments to

1 Joan Stearns may be greater than the fair market value for the services provided, and the excess
2 amount would constitute the personal use of campaign funds.⁴¹

3 Third, the Committee has spent over \$6,000 on a storage facility but in its response does
4 not explain what is being stored and does not convey its reason for doing so, other than through
5 the conclusory assertion that the expense is "an ordinary and necessary expense incurred with
6 Representative Stearns's duties as a holder of Federal office." As noted above, Commission
7 regulations allow the use of campaign funds to pay the ordinary and necessary expenses of holding
8 office, including the costs of winding down the office of a former federal officeholder, for a period
9 of six months after the officeholder leaves office.⁴² This six-month winding down period "acts as
10 a safe harbor" and is intended "to ensure that former officeholders have ample time to close down
11 their offices" but "does not preclude a former officeholder who can demonstrate that he or she has
12 incurred ordinary and necessary winding down expenses more than six months after leaving office
13 from using campaign funds to pay those expenses."⁴³ In Advisory Opinion 2013-05 (Gallegly),
14 the Commission concluded that a United States Representative who was retiring after 26 years in
15 office could permissibly spend campaign funds for up to a year to archive and store his
16 congressional materials as an expense necessary to wind down his office after his "extensive

⁴¹ See 11 C.F.R. § 113.1(g)(1)(i)(H); AO 2001-10 (Jesse L. Jackson, Jr.) (Payments to Ms. Jackson were permissible under the Act because she provided "*bona fide*, campaign related services" as long as the payments do not exceed the fair market value); *see also* MUR 6864 (Ruiz III for Congress, *et al.*) (Cert. May 19, 2015) (Commission found no reason to believe that payments to the candidate's spouse were personal use where the median salary for her services to the active committee was \$400 per month); MUR 5701 (Bob Filner for Congress) (Cert. Jul. 13, 2006) (Commission found no reason to believe where that candidate's spouse provided *bona fide* services to the committee and submitted written bids from a competing firm to substantiate the fair market value of the services).

⁴² 11 C.F.R. § 113.2(a)(2).

⁴³ Personal Use E&J, 60 Fed. Reg. at 7873.

1 tenure."⁴⁴ Stearns has made payments for storage for over five years after leaving office, well
2 beyond the one year that the Commission agreed was permissible as a winding down cost in
3 Advisory Opinion 2013-05. Further, Stearns does not claim to still be winding down his former
4 congressional office. In the absence of information as to what is being stored, there is a basis to
5 infer that the storage costs are a personal expense.

6 Fourth, the Committee also paid a total of \$7,890 to Awakening, Inc., purportedly for
7 attendance fees and meals at annual conferences.⁴⁵ While the Committee could permissibly make
8 charitable donations to a group such as Awakening, Inc., which appears to be a section 501(c)(3)
9 organization, these payments were for Stearns to attend and eat meals at conferences and were not
10 donations within the scope of 11 C.F.R. § 113.1(g)(2), which defines as personal use any
11 charitable donations relating to the candidate's "personal benefit." The Commission explained in
12 adopting this provision that it was codifying the Commission's approach in Advisory Opinion
13 1983-27 (McDaniel), which concluded that a former officeholder's donation of campaign funds to
14 a tax-exempt organization would constitute personal use if "any of the funds donated by your
15 committee accrue to your benefit."⁴⁶ Here, the Committee used campaign funds to pay for a
16 charitable organization's provision of meals to Stearns, as well as programming which
17 Respondents do not indicate was related to Stearns's candidacy or the duties of Stearns's former
18 office. Accordingly, the payments to Awakening, Inc. appear to have been made for personal use.

⁴⁴ See Advisory Opinion 2013-05 (Gallegly). This amount includes the \$6,040 alleged in the Complaint, as well as the \$1,850 credit card payment that Respondents acknowledge was for a payment to Awakening, Inc. for attendance and meals at another conference.

⁴⁵ See *supra* note 6.

⁴⁶ Advisory Opinion 1983-27 (McDaniel) at 2.

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1 Fifth, the Committee paid \$4,118.95 in membership fees and expenses to the National
2 Republican Club of Capitol Hill. Respondents assert that Stearns reimbursed the Committee
3 \$2,019.95 after the Complaint was filed. Although the Commission has explained that the
4 personal use regulation at 11 C.F.R. § 113.1(g)(1)(i)(G) "allows a candidate or officeholder to use
5 campaign funds to pay membership dues in an organization that would have political interests,"⁴⁷
6 Stearns is neither a candidate nor a Federal officeholder and has not been either for over five
7 years. Thus, the membership fees are unrelated to maintaining political contacts with constituents
8 or the business community in relation to his campaign or federal office. Because the Committee's
9 payment of Stearns's club dues, fees, and expenses fulfills a commitment, obligation, or expense
10 that would exist irrespective of Stearns's campaign or duties as a federal officeholder, the
11 payments to the Club constitute personal use.⁴⁸

12 Sixth, the Committee states that it paid \$230.45 for lodging for Stearns when he traveled to
13 Jacksonville, Florida to present a \$2,500 contribution to an elementary school. While the
14 contribution made to the school is permissible under 11 C.F.R. § 113.1(g)(2), the cost of the
15 lodging seems to be for Stearns's personal benefit rather than a charitable contribution within the
16 scope of 11 C.F.R. § 113.1(g)(2) and therefore appears to constitute personal use.

⁴⁷ Personal Use E&J, 60 Fed. Reg. at 7866.

⁴⁸ This matter is distinguishable from several other matters in which the Commission either closed the file or dismissed a matter concerning *candidates'* or *sitting* officeholders' payment of membership fees at clubs because this matter concerns payments made several years after any candidacy and tenure as a federal officeholder. See MUR 6672 (Bilirakas) (failing to find reason to believe that campaign funds were converted to personal use where the Committee paid membership dues and event fees to a division of the Shriners organization); MUR 5424 (Virginia Foxx for Congress) (finding reason to believe and sending admonishment letters, but taking no further action where the candidate used \$100 in committee funds to pay membership dues in a local Chamber of Commerce based on the *de minimis* amount involved); Negotiated Settlement ¶ 3, ADR 056 (Mike Bilirakis for Congress) (Feb. 15, 2002) (resolving allegations that the candidate "used excess campaign funds in 1999 and 2000 to pay dues to approximately thirty-eight (38) organizations, totaling over \$1,900" and accepting without analysis the respondents' contention that, in light of the language of the Personal Use E&J recited above, all of the payments were permissible because the memberships "[were] undertaken as part of the candidate's effort to stay in touch with his constituents.").

1 Seventh, the Committee spent \$380.14 to send "holiday cards." Although the Committee
2 purports that the cards are "gifts of minimal value" sent to "supporters," we have no further
3 information regarding the number or type of cards sent, the message in the cards, or the target
4 audience who received the cards. It is unclear whether the cards were related to Stearns's role as
5 an officeholder and some or all of the expense may have existed irrespective of that role.
6 Therefore, the cost of the cards may constitute personal use.

7 Based on the foregoing, we recommend that the Commission find reason to believe that
8 Respondents violated 52 U.S.C. § 30114(b).

9 **IV. PROPOSED INVESTIGATION**

10 The proposed investigation for this matter would focus on determining the full amount of
11 Committee funds converted to personal use,
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17 We recommend that the
18 Commission authorize the use of compulsory service if necessary to investigate this matter.

19 **V. RECOMMENDATIONS**

- 20 1. Find reason to believe that Clifford "Cliff" B. Stearns and Friends of Cliff Stearns
21 and Joan Stearns in her official capacity as treasurer violated 52 U.S.C. § 30114(b);
22
23 2. Approve the attached Factual and Legal Analysis;
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25 3. Approve the use of compulsory process; and

4. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

4/27/18
Date

Kathleen M. Guith
Kathleen Guith
Associate General Counsel

Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

Wanda Brown
Wanda D. Brown
Attorney

Attachment:
Factual and Legal Analysis

19044473449

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Clifford "Cliff" B. Stearns **MUR: 7292**
6 Friends of Cliff Stearns and
7 Joan Stearns in her official
8 capacity as treasurer
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 (the "Commission") by Brendan M. Fischer and Catherine Hinckley Kelley from the Campaign
13 Legal Center. *See* 52 U.S.C. § 30109(a)(1). The Complaint in this matter alleges violations of
14 the personal use provisions of the Federal Election Campaign Act of 1971, as amended (the
15 "Act"), in connection with disbursements made by former Congressman Clifford B. Stearns and
16 his authorized campaign committee, Friends of Cliff Stearns and Joan Stearns in her official
17 capacity as treasurer (the "Committee") (collectively, "Respondents"). The Complaint alleges
18 that Stearns, who has not been a candidate since 2012, used over \$36,000 in Committee funds for
19 post-candidacy personal expenses including, among other things, monthly cell phone bills,
20 monthly salary payments to Stearns's wife, political contributions meant to further Stearns's
21 lobbying career, membership dues and expenses at a private club and retreat, storage fees, and
22 miscellaneous credit card charges, in violation of 52 U.S.C. § 30114(b).

23 Respondents deny the allegations, asserting that the disbursements in question are
24 permissible uses related to Committee expenses or to Stearns's duties as a former federal
25 officeholder. Notwithstanding this assertion, the response indicates that, out of "an abundance of
26 caution," Stearns has reimbursed the Committee for the cell phone bills and food and beverages
27 at the private club. Further, Respondents acknowledge that they failed to itemize a small number

1 of disbursements related to credit card charges, but argue that the failure to itemize those charges
2 was a *de minimis* error and that the Commission should dismiss this matter.

3 As discussed below, it appears that a substantial number of the challenged disbursements
4 were made for personal expenses, in violation of 52 U.S.C. § 30114(b). Accordingly, the
5 Commission finds reason to believe that Stearns and the Committee violated the Act by
6 expending campaign funds for personal use.

7 II. FACTUAL BACKGROUND

8 Clifford "Cliff" B. Stearns is a former U.S. Representative from Florida's 6th
9 Congressional District. Stearns held his seat from 1989 to 2013. Stearns's principal campaign
10 committee holds over \$1.64 million in cash on hand and carries no debt.¹ Joan Stearns, the wife
11 of the former candidate, is the Committee's treasurer.

12 The Complaint alleges that since leaving his Congressional office, Stearns has been
13 violating the Act by converting campaign funds to personal use.² Specifically, the Complaint
14 alleges that Stearns has used Committee funds to further his lobbying career and subsidize his
15 family by: (1) paying a monthly cell phone bill; (2) making payments to his wife for
16 "administrative services"; (3) paying for membership dues, meals, and beverages at a private DC
17 club; (4) making contributions to political candidates; (5) paying for attendance and meals at a
18 conservative retreat; (6) paying for the use of a storage facility; (7) paying for book appraisal
19 services; (8) paying for framing services; (9) paying credit card bills for "holiday cards" and

¹ Friends of Cliff Stearns, 2017 Year-end Report, FEC Form 3, *Report of Receipts and Disbursements* at 2 (Jan. 29, 2018), <http://docquery.fec.gov/cgi-bin/forms/C00229377/1201427/>. The Committee discloses no contributions received on recent reports. It appears that receipts are limited to profits from the investment of Committee funds, *e.g.*, recurring receipts from T. Rowe Price and the Vanguard Group. *Id.*

² Compl. at 1 (Oct. 27, 2017).

1 "books/gifts"; and (10) paying unitemized credit card bills.³ The Complaint alleges that the total
2 disbursements made for personal use since Stearns left office are as follows:⁴

Disbursement	Purpose	Amount
Verizon	Cell Service	\$5,180.00
Joan Stearns	Administrative Support	\$5,000.00
National Republican Club of Capitol Hill	Membership Dues/Food and Beverage	\$4,118.95
Various Political Candidates ⁵	Contributions	\$5,000.00
Awakening, Inc. ⁶	Annual Conservative Retreat	\$6,040.00
Neighborhood Storage	Storage Services	\$6,008.00
Roger's Frame Shop	Framing Services	\$1,093.51
Second Story Books	Appraisal	\$340.00
Card Services	Holiday Cards	\$380.14
Card Services	Books/gifts	\$1,469.42
Card Services	Not itemized	\$2,246.45
	Total	\$36,876.47

3
4 The Complaint contends that many of the disbursements at issue were for expenses that
5 the Committee never paid for while Stearns was a candidate or a U.S. Representative.⁷ For
6 example, the Complaint indicates that the Committee did not disclose payments for a cell phone
7 while Stearns was a candidate or a member of Congress.⁸ In addition, the Complaint notes that
8 the Committee began paying Joan Stearns \$1,000 a month for "administrative services" in June

³ *Id.* at 3-8.

⁴ *Id.*

⁵ *Id.* at 4-5. Specifically, the Complaint alleges that Stearns used campaign funds for the following contributions made in order to further Stearns's lobbying career: (1) \$2,000 to Rep. Chris Smith; (2) \$1,000 to Rep. Greg Walden; (3) \$1,000 to Sen. Kelly Ayotte; and (4) \$1,000 to Rep. John Mica.

⁶ The amount at issue in this allegation, \$6,040, is the total of six payments to Awakening, Inc.: (1) \$1,320 on January 10, 2014; (2) \$650 on October 19, 2014; (3) \$1,320 on November 20, 2014; (4) \$1,850 on October 14, 2015; (5) \$350 on January 7, 2017; and (6) \$550 on May 1, 2017.

⁷ Compl. at 5.

⁸ *Id.*

1 2017, over three years after Stearns left office, and argues that the payments exceed the fair
2 market value for a treasurer given the Committee's limited activity during this period.⁹

3 Finally, the Complaint alleges that the contributions made to various candidates, as well
4 as the membership dues to the National Republican Club of Capitol Hill, are tied to Stearns's
5 position as a paid lobbyist. In support of this allegation, the Complaint includes information
6 from a news article noting that Stearns has contributed funds from his campaign account to
7 "lawmakers with influence over issues he's being paid to lobby on, including foreign investment
8 and energy."¹⁰

9 Respondents deny that Stearns converted Committee funds for personal use.¹¹ They
10 argue that the Act and Commission regulations allow excess campaign funds to be used for a
11 variety of purposes, including "paying ordinary and necessary expenses incurred in connection
12 with duties of the individual as a holder of Federal office," contributing to tax exempt
13 organizations, and "any other lawful purpose" as long as the expenses would not exist
14 irrespective of a campaign or duties as a federal officeholder.¹² Respondents explain that Stearns
15 maintains the Committee because he has not ruled out another run and that the expenses listed in

⁹ *Id.* at 5-6. Joan Stearns was named Committee treasurer in an amended Statement of Organization filed with the Commission on April 6, 2013. *See* Friends of Cliff Stearns, FEC Form 1 *Statement of Organization* (Apr. 6, 2013), <http://docquery.fec.gov/cgi-bin/forms/C00229377/864148/>. The Complaint contrasts the payments to Joan Stearns for administrative services with the fact that the Committee did not pay Joan Stearns for serving as treasurer during the 2014 or 2016 election cycles.

¹⁰ Compl. at 3-4 (citing Bill Theobald and Donovan Slack, *Former Lawmakers Sit on Tens of Millions in Campaign Cash*, USA TODAY (July 31, 2015), <https://www.usatoday.com/story/news/politics/2015/07/31/former-lawmakers-still-have-campaign-cash/30943329/>).

¹¹ Resp. at 1 (Nov. 21, 2017). Stearns and the Committee were separately notified of this complaint. After only the Committee filed a response, Respondents' counsel later indicated that the response was on behalf of both Stearns and the Committee.

¹² *Id.*

1 the Complaint were related to Stearns's previously held federal office or are otherwise
2 permissible uses of campaign funds.¹³

3 Respondents specifically assert that the cell phone payments are legitimate because they
4 cover the cost of a Verizon hotspot used by the Committee to file reports with the Commission.¹⁴
5 Despite this assertion, the Respondents declare that, in an "abundance of caution," Stearns has
6 reimbursed the Committee \$5,180 for the cost of the cell phone service and cell phone.¹⁵

7 Moreover, Respondents argue that Commission regulations allow campaign funds to be
8 used for membership dues to an organization that has political interests, and contend that Stearns
9 consulted with Commission staff and was told that it was permissible to pay membership fees for
10 the National Republican Club (the "Club") with Committee funds.¹⁶ Respondents explain that,
11 when made aware that meals at the Club may not be treated in the same manner as Club
12 membership fees, Stearns reimbursed the Committee \$2,019.95 for the cost of food and
13 beverages purchased at the Club.¹⁷

14 Respondents further contend that the Act allows candidate committees to make
15 contributions to federal, state, or local committees and candidates. Respondents point to the
16 Committee's contributions to other candidates and committees that were not listed in the

¹³ *Id.* at 1-3.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 2. On May 19, 2014, Stearns spoke with his Committee analyst in the Reports Analysis Division ("RAD") regarding permissible uses of residual campaign funds. The analyst explained the general guidelines of personal use, but referred Stearns to the Information Division. On June 16, 2017, Joan Stearns contacted RAD and asked questions about converting the Committee to a multicandidate committee. The Committee has not made changes to its organization.

¹⁷ *Id.*

1 Complaint as evidence that the Committee's contributions to candidates were not made to further
2 Stearns's lobbying career.¹⁸ Respondents maintain that the motivation for the contributions is
3 irrelevant and does not fall under the Commission's jurisdiction.¹⁹

4 With regard to the payments to Joan Stearns, Respondents state that, as the treasurer of
5 the Committee, Joan Stearns prepares and files reports with the Commission, prepares tax filings,
6 and handles correspondence and requests for charitable contributions.²⁰ According to
7 Respondents, the Committee executed a contract in June 2017 with Joan Stearns that sets forth a
8 \$1,000 monthly payment in exchange for her professional services to the Committee, which the
9 Committee maintains is the fair market value for her services.²¹

10 As to the remaining disbursements, Respondents assert that the Committee's payments to
11 Awakening, Inc. for attendance at retreats are permissible charitable contributions to a section
12 501(c)(3) non-profit organization and explain that the Committee's disbursements for framing
13 and book appraisal relate to Stearns's donation of materials to other educational and non-profit
14 institutions: the College of Central Florida and the Ocala Public Library.²² The Respondents
15 further argue that the Committee's disbursements for holiday cards were permissible *de minimis*
16 value "gifts" for supporters and that the disbursements for books and gifts were to purchase
17 Stearns's book, for which Respondents assert Stearns received no royalties, as *de minimis* value

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* Respondents argue that there is no legal significance to the fact that Joan Stearns previously offered her services as a treasurer at no cost. *Id.* at 3-4.

²² *Id.* at 4-5 (noting that the Committee sent holiday cards "in order to garner and sustain support" in light of Stearns's "open mind in regard to running for office" again).

1 gifts for supporters.²³ The Respondents also state that the cost of the storage unit is "an ordinary
2 and necessary expense incurred with Representative Stearns's duties as a holder of Federal
3 office."²⁴ Finally, Respondents explain that the unitemized expenses paid for with the
4 Committee credit card were an \$1,850 payment to Awakening, Inc., for another conference, \$166
5 for the Committee post office box, and \$230.45 for lodging for Stearns when he attended a
6 charitable event.²⁵

7 III. LEGAL ANALYSIS

8 The Act affords federal candidates and their campaign committees wide discretion in the
9 disposition of their campaign funds and provides that contributions accepted by a candidate may
10 be used in several categories of permissible non-campaign uses of campaign funds, including the
11 "ordinary and necessary expenses incurred in connection with duties of the individual as a holder
12 of Federal office."²⁶ Such expenses include the "costs of winding down the office of a former
13 Federal officeholder for a period of 6 months after he or she leaves office."²⁷ Commission
14 regulations specify that any use of funds that would be personal use "will not be considered . . .
15 an ordinary and necessary expense incurred in connection with the duties of a holder of Federal
16 office."²⁸ Candidates and their committees may also use campaign funds to make donations to

²³ *Id.* at 4 (noting that the Committee ended up donating the books to Goodwill).

²⁴ *Id.* at 5 (noting that Stearns is not winding down his campaign).

²⁵ *Id.* The credit card payment for \$1,850 that was used to pay Awakening, Inc. was not itemized and was therefore not included in the \$6,040 the Complaint alleges were impermissible payments to Awakening, Inc.

²⁶ 52 U.S.C. § 30114(a)(2).

²⁷ 11 C.F.R. § 113.2(a)(2).

²⁸ 11 C.F.R. § 113.1(g)(5).

1 tax-exempt organizations described in section 170(c) of the Internal Revenue Code and for "any
2 other lawful purpose" that does not convert the funds to personal use.²⁹

3 Conversion to personal use occurs when funds in a campaign account are used "to fulfill
4 any commitment, obligation, or expense of a person that would exist irrespective of the
5 candidate's election campaign or individual's duties as a holder of Federal office."³⁰ The Act
6 and Commission regulations further set forth certain uses of campaign funds that constitute *per*
7 *se* conversion to personal use, including utility payments, non-campaign-related automobile
8 expenses, and dues and fees for health clubs, recreational facilities or other nonpolitical
9 organizations unless they are part of the costs of a specific fundraising event taking place on
10 those premises.³¹ In addition, salary payments to family members are personal use, unless the
11 family member is providing *bona fide* services to the campaign.³² Any salary payment to a
12 candidate's family member that exceeds the fair market value for the services provided to the
13 campaign is a conversion to personal use.³³ Similarly, an otherwise permissible charitable
14 donation to a tax-exempt organization would constitute personal use if the candidate receives

²⁹ See 52 U.S.C. § 30114(a)(3), (6); 11 C.F.R. § 113.2(b), (e).

³⁰ See 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

³¹ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i); *see also* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995) ("Personal Use E&J") (explaining that club membership fee provision at 11 C.F.R. 113.1(g)(1)(i)(G) does not "limit legitimate campaign related or officeholder related activity" and "allows a candidate or officeholder to use campaign funds to pay membership dues in an organization that would have political interests. This would include community or civic organizations that a candidate or officeholder joins in his or her district in order to maintain political contacts with constituents or the business community.").

³² 11 C.F.R. § 113.1(g)(1)(i)(H).

³³ *Id.*; *see also* Personal Use E&J, 60 Fed. Reg. at 7866.

1 compensation from the recipient organization before it has expended the entire amount donated
2 for purposes unrelated to the candidate's personal benefit.³⁴

3 For all other disbursements, the Commission determines on a case-by-case basis whether
4 a given campaign fund disbursement is personal use by applying the "irrespective test," that is,
5 whether the payment fulfills a commitment, obligation, or expense that would exist irrespective
6 of the candidate's campaign or duties as a federal officeholder.³⁵ The Commission has stated,
7 however, that "[i]f the candidate can reasonably show that the expenses at issue resulted from
8 campaign or officeholder activities, the Commission will not consider the use to be personal
9 use."³⁶

10 The Complaint in this matter alleges that Stearns impermissibly spent over \$36,000 in
11 campaign funds for his personal expenses after he ceased being a candidate in 2012 and a federal
12 officeholder in 2013.³⁷ A review of the disbursements specified in the Complaint³⁸ shows that a

³⁴ 11 C.F.R. § 113.2(b).

³⁵ 11 C.F.R. § 113.1(g)(1)(ii).

³⁶ See Personal Use E&J, 60 Fed. Reg. at 7863-64.

³⁷ In 1989, Congress amended the Act to ensure that the personal use prohibition would apply to all current and former members of Congress. See Ethics Reform Act of 1989, Public Law 101-194, § 504, 103 Stat. 1716, 1755 (restricting previous grandfather provision that had exempted from personal use rules certain members elected to office prior to 1980). The legislative history of the Ethics Reform Act of 1989 indicates that Congress was particularly interested in prohibiting the conversion of campaign funds to personal use by former officeholders (or their estates) after they have retired, been defeated, or died. See 135 Cong. Rec. S15968-69 (daily ed. Nov. 17, 1989) (statement of Sen. Nickels). As explained in the legislative history, the Ethics Reform Act of 1989 therefore amended the personal use provision to clarify that it would be impermissible for a former Senator to use (or, in the case of a deceased officeholder, have the estate use) campaign funds for personal purposes as essentially "an illegal pension fund." See 135 Cong. Rec. S15969-70 (daily ed. Nov. 17, 1989) (statement of Sen. Shelby). Thus, the question presented here is whether the duties for which Stearns used campaign funds would exist irrespective of his duties as an officeholder, even more than four years after he left office. See Advisory Opinion 2001-03 (Meeks) (applying section 113.1(g)(5)'s personal use restriction to funds spent to defray officeholder expenses); Advisory Opinion 1996-9 (Exon for Senate) (analyzing permissible post-retirement transfer of funds as impermissible conversion to personal use).

³⁸ See *supra* at 3.

1 number of the disbursements (totaling almost \$10,000) appear to be permissible uses of
2 campaign funds. First, the Committee's contributions to other candidates are permissible subject
3 to the Act's limitations.³⁹ Second, it appears that the Committee made *per se* charitable
4 contributions when it: (1) framed and donated a photograph, among other items, to the College
5 of Central Florida; (2) paid for the appraisal of books donated to a public library; and (3) paid for
6 a number of copies of Stearns's book which were then donated to Goodwill.⁴⁰ Finally, it is
7 reasonable to infer that the cost of a post office box would be necessary for even a dormant
8 committee to receive correspondence, and therefore it appears that the \$166 payment for the box
9 was permissible.

10 There is reason to believe that the remaining disbursements may constitute impermissible
11 personal use of campaign funds in whole or in part. First, since Stearns left office, the
12 Committee paid Verizon bills totaling over \$5,000 for an account that included a cell phone,
13 which it describes as being used to generate an internet "hot spot" for filing disclosure reports.
14 Although Respondents state that "no one in the Stearns family is being subsidized by the cell
15 phone and hot spot," it is unclear what this statement means or whether the described Committee
16 uses were the sole uses of the cell phone and "hot spot." Although Stearns's representation that
17 he has reimbursed the Committee for the cell phone bill does not constitute an admission, the
18 failure to provide a clear response makes it reasonable to credit the Complaint's allegation that
19 some or all of these payments, which started only after Stearns left office, were made for an

³⁹ 52 U.S.C. § 30102(e)(3)(B) and 11 C.F.R. § 102.12(c)(2). All of the Committee's contributions to candidates appear to be within the Act's limits.

⁴⁰ See 11 C.F.R. § 113.1(g)(2).

1 expense that would exist irrespective of Stearns's officeholding duties and, therefore, are
2 personal use.

3 Second, the Committee only recently began paying a salary to Stearns's wife, Joan
4 Stearns, for her services as the Committee treasurer. While the Committee could pay its
5 treasurer a salary equivalent to the fair market value for the services rendered, the Complaint
6 challenges the \$1,000 per month payments as being above the fair market value for the treasurer
7 of a dormant committee that makes only a small number of disbursements (all of which the
8 Complaint characterizes as "illegal") and files "short" reports with the Commission. Although
9 Respondents argue that the \$1,000 monthly salary is fair because "many consultants charge over
10 \$5,000 per month for accounting and compliance services," they provide no information
11 regarding how they calculated the fair market value of Ms. Stearns's services for a dormant
12 committee. Further, the Committee did not describe the time Joan Stearns spends on Committee
13 business and whether those duties justify the \$1,000 per month fee. Without that information,
14 and given what appears to be the relatively limited activity of the Committee, there is reason to
15 believe that the salary payments to Joan Stearns may be greater than the fair market value for the
16 services provided, and the excess amount would constitute the personal use of campaign funds.⁴¹

17 Third, the Committee has spent over \$6,000 on a storage facility but in its response does
18 not explain what is being stored and does not convey its reason for doing so, other than through

⁴¹ See 11 C.F.R. § 113.1(g)(1)(i)(H); AO 2001-10 (Jesse L. Jackson, Jr.) (Payments to Ms. Jackson were permissible under the Act because she provided "*bona fide*, campaign related services" as long as the payments do not exceed the fair market value); *see also* MUR 6864 (Ruiz III for Congress, *et al.*) (Cert. May 19, 2015) (Commission found no reason to believe that payments to the candidate's spouse were personal use where the median salary for her services to the active committee was \$400 per month); MUR 5701 (Bob Filner for Congress) (Cert. Jul. 13, 2006) (Commission found no reason to believe where that candidate's spouse provided *bona fide* services to the committee and submitted written bids from a competing firm to substantiate the fair market value of the services).

1 the conclusory assertion that the expense is "an ordinary and necessary expense incurred with
2 Representative Stearns's duties as a holder of Federal office." As noted above, Commission
3 regulations allow the use of campaign funds to pay the ordinary and necessary expenses of
4 holding office, including the costs of winding down the office of a former federal officeholder,
5 for a period of six months after the officeholder leaves office.⁴² This six-month winding down
6 period "acts as a safe harbor" and is intended "to ensure that former officeholders have ample
7 time to close down their offices" but "does not preclude a former officeholder who can
8 demonstrate that he or she has incurred ordinary and necessary winding down expenses more
9 than six months after leaving office from using campaign funds to pay those expenses."⁴³ In
10 Advisory Opinion 2013-05 (Gallegly), the Commission concluded that a United States
11 Representative who was retiring after 26 years in office could permissibly spend campaign funds
12 for up to a year to archive and store his congressional materials as an expense necessary to wind
13 down his office after his "extensive tenure."⁴⁴ Stearns has made payments for storage for over
14 five years after leaving office, well beyond the one year that the Commission agreed was
15 permissible as a winding down cost in Advisory Opinion 2013-05. Further, Stearns does not
16 claim to still be winding down his former congressional office. In the absence of information as
17 to what is being stored, there is a basis to infer that the storage costs are a personal expense.

⁴² 11 C.F.R. § 113.2(a)(2).

⁴³ Personal Use E&J, 60 Fed. Reg. at 7873.

⁴⁴ See Advisory Opinion 2013-05 (Gallegly). This amount includes the \$6,040 alleged in the Complaint, as well as the \$1,850 credit card payment that Respondents acknowledge was for a payment to Awakening, Inc. for attendance and meals at another conference.

1 Fourth, the Committee also paid a total of \$7,890 to Awakening, Inc., purportedly for
2 attendance fees and meals at annual conferences.⁴⁵ While the Committee could permissibly
3 make charitable donations to a group such as Awakening, Inc., which appears to be a section
4 501(c)(3) organization, these payments were for Stearns to attend and eat meals at conferences
5 and were not donations within the scope of 11 C.F.R. § 113.1(g)(2), which defines as personal
6 use any charitable donations relating to the candidate's "personal benefit." The Commission
7 explained in adopting this provision that it was codifying the Commission's approach in
8 Advisory Opinion 1983-27 (McDaniel), which concluded that a former officeholder's donation
9 of campaign funds to a tax-exempt organization would constitute personal use if "any of the
10 funds donated by your committee accrue to your benefit."⁴⁶ Here, the Committee used campaign
11 funds to pay for a charitable organization's provision of meals to Stearns, as well as
12 programming which Respondents do not indicate was related to Stearns's candidacy or the duties
13 of Stearns's former office. Accordingly, the payments to Awakening, Inc. appear to have been
14 made for personal use.

15 Fifth, the Committee paid \$4,118.95 in membership fees and expenses to the National
16 Republican Club of Capitol Hill. Respondents assert that Stearns reimbursed the Committee
17 \$2,019.95 after the Complaint was filed. Although the Commission has explained that the
18 personal use regulation at 11 C.F.R. § 113.1(g)(1)(i)(G) "allows a candidate or officeholder to
19 use campaign funds to pay membership dues in an organization that would have political
20 interests,"⁴⁷ Stearns is neither a candidate nor a Federal officeholder and has not been either for

⁴⁵ See *supra* note 6.

⁴⁶ Advisory Opinion 1983-27 (McDaniel) at 2.

⁴⁷ Personal Use E&J, 60 Fed. Reg. at 7866.

1 over five years. Thus, the membership fees are unrelated to maintaining political contacts with
2 constituents or the business community in relation to his campaign or federal office. Because the
3 Committee's payment of Stearns's club dues, fees, and expenses fulfills a commitment,
4 obligation, or expense that would exist irrespective of Stearns's campaign or duties as a federal
5 officeholder, the payments to the Club constitute personal use.⁴⁸

6 Sixth, the Committee states that it paid \$230.45 for lodging for Stearns when he traveled
7 to Jacksonville, Florida to present a \$2,500 contribution to an elementary school. While the
8 contribution made to the school is permissible under 11 C.F.R. § 113.1(g)(2), the cost of the
9 lodging seems to be for Stearns's personal benefit rather than a charitable contribution within the
10 scope of 11 C.F.R. § 113.1(g)(2) and therefore appears to constitute personal use.

11 Seventh, the Committee spent \$380.14 to send "holiday cards." Although the Committee
12 purports that the cards are "gifts of minimal value" sent to "supporters," we have no further
13 information regarding the number or type of cards sent, the message in the cards, or the target
14 audience who received the cards. It is unclear whether the cards were related to Stearns's role as
15 an officeholder and some or all of the expense may have existed irrespective of that role.
16 Therefore, the cost of the cards may constitute personal use.

⁴⁸ This matter is distinguishable from several other matters in which the Commission either closed the file or dismissed a matter concerning *candidates*' or *sitting* officeholders' payment of membership fees at clubs because this matter concerns payments made several years after any candidacy and tenure as a federal officeholder. See MUR 6672 (Bilirakas) (failing to find reason to believe that campaign funds were converted to personal use where the Committee paid membership dues and event fees to a division of the Shriners organization); MUR 5424 (Virginia Foxx for Congress) (finding reason to believe and sending admonishment letters, but taking no further action where the candidate used \$100 in committee funds to pay membership dues in a local Chamber of Commerce based on the *de minimis* amount involved); Negotiated Settlement ¶ 3, ADR 056 (Mike Bilirakis for Congress) (Feb. 15, 2002) (resolving allegations that the candidate "used excess campaign funds in 1999 and 2000 to pay dues to approximately thirty-eight (38) organizations, totaling over \$1,900" and accepting without analysis the respondents' contention that, in light of the language of the Personal Use E&J recited above, all of the payments were permissible because the memberships "[were] undertaken as part of the candidate's effort to stay in touch with his constituents.").

- 1 Based on the foregoing, the Commission finds reason to believe that Respondents
- 2 violated 52 U.S.C. § 30114(b).

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